

No. 13-0133 SWC

1. Stacy Weeks held a Missouri Water Treatment D, Certificate of Competency No. 8281, issued by the Department of Natural Resources' certification section.

2. Such a certificate must be renewed every three years. In Mr. Weeks' case, his certificate most recently had an expiration date of October 31, 2012.

3. The Department mailed Mr. Weeks a renewal reminder postcard to his address on file, 60 days in advance of the expiration of his certificate.

4. Mr. Weeks did not renew by October 31, 2012.

5. After a certificate expires, there is a two-month grace period to renew. The Department mailed a courtesy reminder postcard to Mr. Weeks' address on file shortly after October 31, 2012.

6. Mr. Weeks did not renew by December 31, 2012, the date his grace period for renewal ended.

7. The Department notified Mr. Weeks by letter dated January 10, 2013 that his certificate was deactivated as of December 31, 2013.

Conclusions of Law

In general, this Commission has jurisdiction of appeals from "decisions" of the director of the Department. *See* §§ 621.250 and 640.013, RSMo.¹ But as explained below, Mr. Weeks is not appealing from a decision of the director.

The Department administers programs assigned to it relating to environmental control, including various types of certifications of public water system operators. *See generally* 10 CSR 60-14.020.² The procedures for renewal of such certifications are established by regulation. 10 CSR 60-14.020(8).

¹ All references to "RSMo" are to the Revised Statutes of Missouri (Supp. 2012), unless otherwise noted.

² All references to "CSR" are to the Missouri Code of State Regulations, as current with amendments included in the Missouri Register through the most recent update.

A regulation promulgated pursuant to statutory authority, like the one here, has the force and effect of law, and this Commission must follow it. *See Pollock v. Wetterau Food Distr. Group, Inc.*, 11 S.W.3d 754, 767 (Mo. App. E.D. 1999) (a duly promulgated regulation binds a court, which cannot substitute its own judgment). *See also Dilts v. Dir. of Revenue*, 208 S.W.3d 299, 302 (Mo. App. W.D. 2006) (same).

The certificate renewal procedures are very specific. Under 10 CSR 60-14.020(8)(E), a certificate holder must renew using the form supplied by the Department and must pay a renewal fee. “Any certificate not renewed within the two (2) months following the expiration shall be considered lapsed.” 10 CSR 60-14.020(8)(F). An operator who wishes to renew a lapsed certificate must submit a new application and submit to reexamination as provided in the regulation. *Id.*

The regulation provides for one limited exception. If a certificate holder has timely submitted a proper application, but the Department delays renewal until after expiration of the holder’s certificate, then the certificate remains valid until the Department issues the replacement or denies renewal. 10 CSR 60-14.020(8)(H). Even under this sole, limited exception, the certificate holder must timely seek renewal.

The regulation also addresses a certificate holder’s lack of notice from the Department. It specifically provides that while the Department will send a renewal notice to a certificate holder’s last known address at least 60 days before a certificate expires, the Department’s “[f]ailure...to notify the certified operator of the certificate’s pending expiration does not relieve the certified operator of the responsibility for renewing the certificate.” 10 CSR 60-14.020(8)(D). In other words, a certificate holder is always responsible for renewing on time.

The regulation elsewhere specifically addresses appeal rights to this Commission in the case of a decision by the director of the Department to deny, suspend, or revoke a certificate. 10 CSR 60-14.020(7)(E). But the regulation does not provide for appeal rights in the case of a

certificate that has been deactivated due to expiration. Similar to the regulation, § 621.250.3 only provides for appeals to this Commission from “[a]ny decision by the director” of the Department.

The deactivation of a certificate is effected by operation of the regulation, not a decision made by the director of the Department, or anyone else. Therefore, no appeal lies in this Commission from the deactivation of a certificate due to expiration.

Here, Mr. Weeks held a Missouri Water Treatment D, Certificate of Competency. He did not renew before his certificate expired on October 31, 2012, nor did he renew by December 31, 2012, during the two-month grace period. Mr. Weeks alleges in his complaint that the first correspondence he received from the Department arrived in January 2013, when he was notified of the deactivation of his certificate. The Department twice mailed reminder postcards to Mr. Weeks before his certificate expired. Even if he did not receive them, the regulation provides that he remains responsible for renewing on time.

Therefore, by operation of the regulation, his certificate was deactivated on December 31, 2012. He has no right of appeal to this Commission. His recourse is to reapply and be reexamined, as the regulation provides.

Summary

We deny Mr. Weeks’ appeal.

SO ORDERED on May 1, 2013.

/s/ Alana M. Barragán-Scott
ALANA M. BARRAGÁN-SCOTT
Commissioner